

1975 and that the plaintiff has used it for travel purposes. The plaintiff contends that the issue of the Indian passport to him and that he has used it as a travel document does not bring him within the ambit of Article 134(3) of the Constitution. More than that is required. He has not taken steps to renounce his Singapore citizenship, he has not abandoned his Singapore citizenship; he has not voluntarily claimed and exercised any rights under the law of India, like voting in elections in India. The plaintiff points out that by Article 134(4) of the Constitution, by using the Indian passport he is only "deemed voluntarily to claim and exercise a right available" under the law of India. He submits that he has right to have his case referred to a Committee of Inquiry under Article 133 of the Constitution.

The statement that the plaintiff is an Indian citizen in his Indian passport is not a mere declaration. His whole conduct from 1964 onwards is consistent with that of an Indian citizen, exercising the rights of an Indian citizen. His Indian Secondary School Leaving Certificate issued under the authority of the Government of Tamil Nadu on March 5, 1970, described him as an Indian National (AB-74). This Certificate was issued before he obtained his Indian passport. He was trying to hang on to his Indian citizenship and after obtaining the Indian passport in May 1975 he travelled as an Indian citizen.

The plaintiff's application for a Singapore passport in 1970 was turned down. He was asked to apply for a CS which he failed to do. Even assuming that he did apply for a CS in 1970 and was turned down, he did not bother to appeal or ask for a review either immediately or at any time before he obtained his Indian passport and travelled on it in 1975. His application for an Indian passport was clearly voluntary. He said that in 1975 he did not even tell his brother Henry that he was going to Singapore. This is clearly a lie. The truth is that he wanted to go to Singapore for a vacation and felt it more convenient to travel on an Indian passport so that he would not encounter the problem of National Service. He said he went on that trip to claim his citizenship rights. Yet for a period of three months while he was here he did nothing about it. It was a lame excuse to say that his brother urged him to complete his studies first and so he did not proceed with his original intention of claiming citizenship rights.

It is clear that the plaintiff did voluntarily claim and exercise rights of a citizen of India with-

A in the meaning of Article 134(3).

It appears to me that on the facts of this case, the Government has not acted unreasonably and has acted on good grounds.

B The plaintiff's claim is dismissed with no order as to costs as plaintiff is a legally aided person.

Order accordingly.

C Solicitors: *Amarjit Rubin & Partners.*

D **RE AH YEE CONTRACTORS (PTE.) LTD.**

[O.C.J. (Thean J.) July 23, 1987]

[Singapore – Companies Winding Up No. 740 of 1986]

E *Company Law – Winding up – Application for – Petitioner is shareholder and contributory – Whether petitioner has locus standi – Merits of application.*

This was a petition by Lieu Poh Toon, as a contributory for the winding up of Ah Yee Contractors (Private) Limited ("the Company") on the ground that it was just and equitable that the Company should be wound up. The petition was opposed by the Company and another contributory, F Goh Ah Aun (Madam Goh) who held more than 50% of the issued shares of the Company.

The Company was incorporated on June 16, 1969 at the instance of one Boey. The petitioner and Boey were named in the Articles as the first directors. At the time of the incorporation of the Company, Boey was the sole proprietor of a business of general building and renovation contractor under the name and style of Ah Yee contractors. Boey practically left the day to day running of the business to the petitioner.

H Though the Company was incorporated in 1969, it did not commence carrying on any business until 1975, when it took over the business of Boey then carried on under his sole proprietorship. On January 1, 1975, Madam Goh, the second wife of Boey, was appointed a director of the Company. Boey was the chairman and managing director.

I Boey died in August 1983. After Boey's death, Madam Goh assumed the position of chairman of the Company and the petitioner continued to take care of the day to day management.

In 1984 and 1985 the Company suffered losses. It was during this time that differences between the petitioner, who was in charge of the day to day management, and Madam Goh, who was the chairman, soon emerged. On the basis of these differences the petitioner contended that there was a complete deadlock between him and Madam

Goh in the management of the Company and that it was just and equitable that the Company should be wound up.

Held, dismissing the petition: (1) a petitioner for the winding up of a Company, in which he is a fully paid shareholder, must show that he has a tangible interest in relief sought *i.e.* the winding up and where it is not shown that upon the winding up, after full payment of all debts and liabilities of the Company, there is a surplus divisible among the shareholders, then he has no interest "sufficient to induce the court to interfere in his behalf",

(2) the petitioner in the present case had an interest — a tangible interest — on the winding up of this Company; he was a creditor of the Company and therefore had *locus standi* to present this petition;

(3) the Company was formed essentially so that he and his family could have shares in it, and since the petitioner had been working for him for a considerable period of time, he was allowed to have a minority stake in the Company. It was never meant to be a partnership between Boey and his wife on the one hand and the petitioner on the other;

(4) there was no attempt made by Madam Goh to exclude the Petitioner from participation in the management of the company or oust him from the board. Nor was there sufficient evidence to show any breach of good faith or a lack of probity on the part of Madam Goh;

(5) the Petitioner had not made out his case that it was just and equitable that the Company should be wound up.

Cases referred to:

- (1) *Re Othery Construction, Ltd.* [1966] 1 All E.R. 145.
- (2) *Re Expanded Plugs Ltd.* [1966] 1 W.L.R. 514.
- (3) *In re Rica Gold Washing Company* (1879) 11 Ch. D. 36.
- (4) *In re Westbourne Galleries* [1973] A.C. 360.

COMPANIES WINDING UP.

Wee Han Kim for the petitioner.

Stanley Wong Hoong Hooi for the respondents:

Cur. Adv. Vult.

Thean J.: This is a petition by Lieu Poh Toon, as a contributory, for the winding up of Ah Yee Contractors (Private) Limited ("the Company") on the ground that it is just and equitable that the Company should be wound up. The petition is opposed by the Company and another contributory, Goh Ah Aun ("Madam Goh"), who holds more than 50% of the issued shares of the Company.

The material facts leading to the presentation of the petition are these. The Company was incorporated on June 16, 1969 with an authorised capital of \$200,000 divided into 200,000 shares of \$1 each. The Company was incorporated at the

A instance of one Boey Chun Heng ("Boey"), and the subscribers to the Memorandum and Articles of Association of the Company were Boey and the petitioner, both of whom were also named in the Articles as the first directors. The issued capital of the Company at that time was only \$2 comprising the two subscribers' shares of \$1 each held by Boey and the petitioner respectively. The objects for which the Company was incorporated are general and one of its objects is to carry on the business of building contractors.

C At the time of the incorporation of the Company, Boey was the sole proprietor of a business of general building and renovation contractor under the name and style of Ah Yee Contractors. That business was started by Boey's step-father sometime before the Second World War and after his step-father's death, Boey took over and continued the business. The petitioner was first employed by Boey in or about 1955 as a clerk-of-works, and, over the next five to six years, had become almost Boey's general manager of the business; Boey practically left the day to day running of the business to the petitioner as Boey was involved in other businesses or activities.

Though the Company was incorporated in 1969, it did not commence carrying on any business until 1975, when it took over the business of Boey then carried on under his sole proprietorship. On January 1, 1975, Madam Goh (who is the second wife of Boey) was appointed a director of the Company and Boey was the chairman and managing director. In March, 1975, Boey mortgaged his residence, No. 190, Lornie Road, Singapore to Chung Khiaw Bank Limited to secure the Company's overdraft account with the bank up to the limit of \$150,000. On September 13, 1976, the Company issued and allotted shares for cash at par as follows:

- (a) 7,999 shares to Boey,
 - (b) 9,999 shares to the petitioner,
 - (c) 6,000 shares to Boey Fook Kee (Boey's son by his first wife), and
 - (d) 16,000 shares to Madam Goh,
- H making a total of 39,998 shares, which together with the 2 subscribers' shares amounted to 40,000 shares. It is obvious that the Company, which was formed by or at the instance of Boey and which took over his business, was intended by him to be his own company in which he and members of his family together would hold the majority shares

with a minority stake allotted to the petitioner, who by then had been working for Boey for nearly 20 years. The petitioner must have been regarded by Boey as a trusted and loyal employee, and permitting the petitioner to take an interest in the Company would ensure his continued service in the Company.

Unfortunately, Boey died in August 1983. After Boey's death, Madam Goh assumed the position of chairman of the Company and the petitioner continued to take care of the day to day management. In 1984, Boey Fook Kee transferred his 6,000 shares to Madam Goh and thenceforth the issued shares of the Company were and are held as follows:

- | | |
|------------------------------------|---------------|
| (1) Estate of Boey Chun Heng . . . | 8,000 shares |
| deceased | |
| (2) The petitioner . . . | 10,000 shares |
| (3) Madam Goh . . . | 22,000 shares |

The business of the Company declined owing to general recessionary conditions. The Company raised fresh loans totalling about \$55,000. In August 1984, the Company had difficulty in repaying the cash loans and the interest thereon. It was alleged by the petitioner, but disputed by Madam Goh, that at that juncture, Madam Goh requested the petitioner to raise more capital so as to solve the financial problem of the Company. According to the petitioner, he then used his personal assets to raise funds to discharge the Company's liabilities. In particular, he claimed that on April 2, 1985 he mortgaged his residence No. 6, Greenleaf Avenue, Singapore to Malayan Banking Berhad to secure his own personal current account up to the limit of \$250,000, and between April 11, 1985 and July 10, 1986, he drew various sums from his own account to pay for moneys owing to subcontractors and wages to workers and other members of the staff of the Company. The petitioner claimed that a total sum of \$176,882.59 had been drawn from his personal banking account to meet the Company's liabilities, and from time to time, various amounts in part-payment were repaid by the Company to his personal account. As at the date of the filing of the petition, he claimed that the amount owing to him by the Company together with interest amounted to \$151,034.65.

While Boey was alive, cheques drawn on the Company's banking accounts were signed by Boey and the petitioner, with Madam Goh as the alternate signatory of Boey. After Boey's death, Madam Goh

A and the Petitioner were the joint signatories. On March 21, 1986, a Board resolution was passed whereby Lim Chin Seng (a son of Madam Goh by her first marriage) was authorised to sign as the alternate signatory to Madam Goh, but all cheques continued to be countersigned by the petitioner. B On July 9, 1986, an attempt was made by Madam Goh to appoint Lim Chin Seng as an additional director and to authorise cheques drawn on the Company's account to be signed by Madam Goh and Lim Chin Seng without the necessity of the petitioner countersigning the same. This proposed resolution was opposed to by the petitioner and C was not passed.

The Company made a loss of \$54,007.39 in 1984 and a loss of \$64,747 in 1985. Differences D between Madam Goh and the Petitioner soon emerged. Principally there are two areas of disputes between them. First, Madam Goh questioned various amounts said to be advanced by the petitioner to or for the account of the Company and also the amount of interest charged by the petitioner. Such dispute relates more to the extent of E advances made to the Company; Madam Goh does not appear to dispute all the advances. Secondly, in 1986, it appears that payments made by a customer of the Company had been paid into their Company's overdraft account with Chung Khiaw Bank Limited which is secured by the property, 190, Lornie Road, Singapore, which belongs to the Estate of F Boey Chun Heng deceased. This was objected to by the petitioner, who maintained that such payments would in effect discharge the security provided for by the Estate. On the basis of these differences the petitioner contends that there is a complete dead-lock between him and Madam Goh in the management of the Company and that it is just and equitable G that the Company should be wound up.

The petition, on the face of it, does not contain much information on the financial position of the Company as at the date of its presentation. In H particular, it gives no information whether its assets exceed its liabilities so that upon winding up of the Company there would be a surplus available for distribution to the shareholders after discharge of all its debts and liabilities. Both the petition and the affidavit of the petitioner affirmed on November 4, 1986 exhibited a draft balance sheet as at I December 31, 1985 and a profit and loss account for the year ended December 31, 1985. The balance sheet shows a net deficit of \$121,279, and the profit and loss account shows an accumulated loss of \$161,279. The balance sheet also shows an item of fixed assets amounting to \$42,554, and I was

told by both counsel that the fixed assets consist of only movable property. Since December 31, 1985, it does not appear – either from the petition or from the affidavit of the Petitioner – that the Company's financial position has improved or deteriorated. Regrettably there is a paucity of evidence on this point. However, as a matter of inference, it seems to me that there is a probability that upon a winding up of the Company there would be no surplus available for distribution to the shareholders after all the debts and liabilities of the Company have been discharged. In view of this, a question immediately arises: whether the Petitioner, as a fully paid shareholder, has any real interest in the relief sought on this petition. Two recent cases bearing on this point are *Re Othery Construction, Ltd.*⁽¹⁾ and *Re Expanded Plugs Ltd.*⁽²⁾ to which I drew counsel's attention. In *Re Othery Construction Limited*, the petition was presented by a fully paid shareholder who alleged that the company was insolvent and that it was just and equitable that the company should be wound up. At the hearing of the petition, a preliminary objection was taken by the opposing contributory that the petition alleged insolvency; that there was no prospect of there being anything available in a winding up for the shareholders, and that, accordingly, the petitioner had no *locus standi* to petition for the winding up of the company. This was upheld by Buckley J. He said, at page 147:

"It has long been accepted and recognised down to the present time that the rule that a contributory petitioner must show that there is a probability of a surplus is still the rule; indeed that was recognised by Pennycuik J., in a case which counsel for the petitioner himself cited: *Re Newman and Howard, Ltd.* [1961] 2 All E.R. 495 at p. 497, where the learned judge said: "There is no doubt that the general rule is as stated by the Court of Appeal in *Re Rica Gold Washing Co* . . . (1879) 11 Ch. D. 36" and the same view was expressed by Wynn-Parry, J., a judge of great experience in this branch of the law, in *Re S.A. Hawken, Ltd* [1950] 2 All E.R. 408 at p. 411. In my judgment it still remains a rule of this court that where a fully paid shareholder petitions for compulsory winding-up he must show, on the face of his petition, a *prima facie* probability that there will be assets available for distribution amongst the shareholders."

In the case of in *Re Expanded Plugs Ltd.*, the petition was presented by a contributory, who was a fully paid shareholder, and was based on the ground that it was just and equitable that the company should be wound up. It appeared from the evidence that the company was insolvent, and Plowman J. held, *inter alia*, that in that event, if the company was wound up there would be no surplus for the contributories. In those circumstances, he held that the petitioner was not entitled to present the

A petition. The basis for this rule was very clearly stated in the judgment of Jessel M.R. in the case of *In re Rica Gold Washing Company*,⁽³⁾ which was quoted and relied upon in both the cases. Jessel M.R. said, at pages 42 to 43:

B "Now I will say a word or two on the law as regards the position of a Petitioner holding fully paid-up shares. He is not liable to contribute anything towards the assets of the company, and if he has any interest at all, it must be that after full payment of all the debts and liabilities of the company there will remain a surplus divisible among the shareholders of sufficient value to authorise him to present a petition. That being his position, and the rule being that the Petitioner must succeed upon allegations which are proved, of course the Petitioner must shew the Court by sufficient allegation that he has a sufficient interest to entitle him to ask for the winding-up of the company. I say "a sufficient interest," for the mere allegation of a surplus or of a probable surplus will not be sufficient. He must shew what I may call a tangible interest. I am not going to lay down any rule as to what that must be, but if he shewed only that there was such a surplus as, on being fairly divided, irrespective of the costs of the winding-up, would give him £5, I should say that would not be sufficient to induce the Court to interfere in his behalf."

From these authorities it seems to me that a
E petitioner for the winding up of a company, in which he is a fully paid shareholder, must show that he has a tangible interest in relief sought, *i.e.* the winding up, and where it is not shown that upon the winding up, after full payment of all debts and liabilities of the company, there is a surplus
F divisible among the shareholders, then he has no interest "sufficient to induce the Court to interfere in his behalf." The whole question therefore turns on whether the petitioner in this case has a tangible interest upon the winding up of the Company. Turning to the facts, so far as they can be gleaned
G from the affidavits filed, it is by no means clear that the Company is insolvent. Both counsel take the stand that the Company is insolvent. But the evidence in support is lacking. Mr. Wee for the petitioner referred me to the draft balance sheet and profit and loss account of the Company for the year ended 1985. There are three difficulties in the way in accepting such financial statements. First, these were mere drafts and had not been
H accepted by the Company, or, for that matter, by the board of directors including no less the petitioner. Secondly, as regards the amount of \$162,294 said to be owing to the petitioner, various sums
I comprised in this amount have been challenged by Madam Goh, and if her challenge is successful, the Company's finances might well be in credit. Thirdly, they are out of date, and there is really no evidence that the financial position of the Company has deteriorated. Be that as it may, it seems to me

that the petitioner has an interest, in the words of Jessel, M.R., sufficient to induce the Court to interfere in his behalf. Apart from being a fully paid shareholder the petitioner is a creditor of the Company. From what I can gather from the petition and the affidavits filed, it is not really disputed that the Company is indebted to the petitioner; what is hotly in dispute is the extent of its indebtedness to the petitioner and the liability of the Company to pay interest on the amount advanced by the petitioner to the Company. In other words, the question is not whether any money is owing by the Company to the petitioner but how much really is owing. The petitioner therefore has an interest – a tangible interest – on the winding up of this Company; he is a creditor of the Company and therefore has *locus standi* to present this petition.

I now turn to consider the petition on its merit. As described above, basically, the petitioner has two complaints. First, the petitioner said that Madam Goh, as the chairman of the Company, had refused to accept or recognise various sums owing to him, which together with interest, he said, amounted to \$151,034.65 as at the date of the petition. Secondly, the petitioner alleged that various amounts owed by a customer of the Company had been paid to the overdraft account of the Company with Chung Khiaw Bank Limited, which account is secured by the property belonging to the estate of Boey Chun Heng deceased. Insofar as the first complaint is concerned, the petitioner is at liberty to institute a suit against the Company for recovery of the amount owing to him plus interest. In my view, it is wrong for him to have recourse to winding up proceedings to compel the Company to discharge or acknowledge the debt owing to him. Equally, the Company is at liberty to dispute such items of the debt owing to the petitioner as it deems fit; the Company may well have genuine grounds to dispute a substantial portion of the amount owing. It is not possible at this stage or at least on the material before me to say that the Company's defence to the claim by the petitioner is groundless. As for the second complaint, the Company is indebted to Chung Khiaw Bank Limited on the overdraft account and in the circumstances of this case I do not see why the Company is not entitled to use its funds to pay up such an overdraft account; admittedly such payment would go towards discharging *pro tanto* the security provided for the overdraft account, *i.e.* the mortgage of No. 190, Lornie Road, Singapore which belongs to the estate of Boey Chun Heng deceased.

A In my view, these differences do not really amount to a deadlock in the management of the Company. If the petitioner is minded to do so, he can still continue to conduct the day to day management of the business of the Company. There is no suggestion that he was prevented in any way from so doing. Assuming that there is a deadlock, it can be resolved in two ways: first, under Article 92 of the Articles of Association of the Company, Madam Goh as the chairman has a second or casting vote in the event of an equality of votes at a directors' meeting; secondly, the shareholders at a general meeting may appoint an additional director. If the petitioner and Madam Goh cannot agree on matters relating to the management of the Company, there is no reason why Madam Goh should not exercise her voting right at a shareholders' meeting to appoint an additional director or directors of the Company. In fact, at one stage, the petitioner appeared to be willing to accept the appointment of a new director and resign from his directorship of the Company.

Though the petition was founded on the subsistence of a deadlock between the petitioner and Madam Goh in the management of the Company, Mr. Wee raised two other grounds. First, he said there was bad faith or a lack of probity on the part of Madam Goh in (i) refusing to acknowledge various amounts owing by the Company to the petitioner and (ii) in applying funds received from a customer towards payment of the overdraft account with Chung Khiaw Bank Limited, and therefore it is just and equitable to wind up the Company. In support, he relied on the case of *In re Westbourne Galleries*.⁽⁴⁾ I do not see how that case can really be of any assistance to me. There, two partners, E. and N., had been in business for quite some time, and, subsequently, formed a private limited company, in which each held the same number of shares, to take over their business. Soon after the formation, N. introduced his son to the company and some shares were transferred by both of them to the son, with the result that N. and his son together had a majority shareholding in the company. Subsequently, differences arose between N. and his son on the one hand and E. on the other, and N. and his son took steps to remove E. from the office of a director. E. thereupon presented a petition for the winding up of the company on the ground that it was just and equitable that the company should be wound up. Plowman J., who heard the petition, allowed the petition and made a winding up order, but on appeal, his decision was reversed. On further appeal, the House of Lords reversed the decision of the Court of Appeal

and restored the order made by Plowman J. It was held that in that case, E. and N. had formed the company on the basis that their prior association in which E. was entitled to participate in the management would, as a matter of personal relationship and good faith, remain the same and that to exclude E. from participation in the management would be in breach of good faith as in the case of a partnership.

In this case, the position is clearly different. It seems to me clear that at the time when the Company was incorporated, Boey intended it to be a company to take over and continue his business which he had been carrying on as a sole proprietor for many years. It was formed essentially so that he and his family could have shares in it, and since the petitioner had been working for him for a considerable period of time, he was allowed to have a minority stake in the Company. It was never meant to be a partnership between Boey and his wife on the one hand and the petitioner on the other. At any rate, there was no attempt made by Madam Goh to exclude the petitioner from participation in the management of the Company or oust him from the board. Nor, on the material before me, was there sufficient evidence to show any breach of good faith or a lack of probity on the part of Madam Goh.

The second ground on which Mr. Wee relies is that the substratum of the Company has gone and therefore it is just and equitable that the Company should be wound up. He said that the petitioner had withdrawn from the Company since the end of 1986 and since then the Company has had no contracting business and is an empty shell. On this, he is met with an insurmountable difficulty: there is not the slightest shred of evidence to support his contention. In my view this ground is clearly unsustainable and must fail.

In conclusion, I find that the petitioner has not made out his case that it is just and equitable that the Company should be wound up, and accordingly, I dismiss the petition with costs. The injunctions previously granted, pending the hearing of this petition, should now be discharged.

Order accordingly.

Solicitors: Wee Eng Lock & Son; Chee & Teo.

MOHAN SINGH v. ATTORNEY-GENERAL

[O.C.J. (Lai Kew Chai J.) July 29, 1987]

[Singapore – Suit No. 925 of 1983]

Constitutional Law – Citizenship – Applicant born in Singapore but travelling on Indian passport – Whether applicant had “ceased to be a citizen of Singapore” – Constitution of Singapore, arts. 133(1), 134(3) & 135(2).

Administrative Law – Citizenship – Applicant’s claim to Singapore citizenship – Applicant travelling on Indian passport – Termination of citizenship by Minister – Whether breach of natural justice – Constitution of Singapore, Art. 134(3).

The plaintiff in this case was born on May 8, 1951 in Singapore. His father was a citizen of Singapore but his mother was a citizen of India. When the plaintiff was almost 2 years old he was taken to India, travelling on his mother’s passport. He lived in India from 1953 to February 1981. He schooled in India. He finished schooling in 1972. He said that he could not return to Singapore because he had to look after his sickly paternal grandmother and mother.

The plaintiff travelled to Singapore on an Indian passport. He explained that he had to do so, that he had no choice, because earlier he was denied one when he called at the Singapore High Commission in New Delhi, India where he was turned away.

As he was refused a Singapore passport, he applied for and obtained an Indian passport. In his application he had falsely mentioned that his birth place was Budhipind Hoshiarpur in order to obtain the Indian passport to travel to Singapore. His passport had been returned to the Indian High Commission in Singapore and they had impounded it.

In March 1981 the plaintiff’s solicitors applied on his behalf for a certificate of status under sub regulations (1), (2) and (3) of regulation 3 of The Immigration Regulations 1972. The plaintiff’s solicitors wrote to the Registrar of Citizens and explained that the plaintiff had gone to India to study after which he had to look after his mother and grandmother. The plaintiff had returned to Singapore and had “obtained an Indian passport purely for the purpose of his travel to Singapore.”

In May 1982 the Minister for Home Affairs declared that in the circumstances the plaintiff had ceased to be a citizen of Singapore under the then Article 134(3) of the Constitution of Singapore. The declaration was made on the ground that the plaintiff had since November 15, 1980 voluntarily claimed and exercised rights available to himself under the law of India, such rights being rights not available to other Commonwealth citizens. The plaintiff failed in his appeal to the Minister for Home Affairs and he commenced the present actions. He sought declarations to the effect (a) that the cessation of his citizenship was null and void; (b) that he was a citizen of Singapore; and (c) that he was permitted to remain in Singapore under Article 13 of the Constitution.

The issue was whether the Singapore High Commission in New Delhi, India had refused the plaintiff’s application for a passport and that therefore he was compelled to